Pakootas v. Teck Cominco Metals, Ltd., ___ F. Supp. 3d ___, 2023 WL 2090977 (E.D. Wash., Feb. 17, 2023).

- **Holding**: Plaintiff Tribe's claims for natural resource damages under CERCLA were ripe despite fact that the EPA had not yet selected a remedial action, because the two pre-conditions for citizen suits under CERCLA, 60 day notice and selection of a remedial action, were disjunctive, and Tribe had met notice requirement.
- **Summary:** Plaintiff, the Confederated Tribes of the Colville Reservation (the "Colville Tribes"), submitted a petition to the EPA requesting assessment of alleged releases of hazardous waste at a site on the Upper Columbia River. The EPA accepted the petition, and, after failing to get Defendant to agree to an Administrative Order on Consent, issued a final and Unilateral Administrative Order ("UAO") to Defendant, finding Defendant a potentially responsible party and directing it to perform an RI/FS for the Site. Defendant indicated it would not comply, and the Colville Tribes brought an action under CERCLA's citizen suit provision to enforce the UAO. The Tribe later amended its complaint to add a claim for natural resource damages.

  The Defendant moved for summary judgment because a remedial action had not been selected, as required by 42 U.S.C. § 9613(g)(1), which provides as follows:

  > In no event may an action for damages under this chapter with respect to such a vessel or facility be commenced (i) prior to 60 days after the Federal or State natural resource trustee provides to the President and the potentially responsible party a notice of intent to file suit, or (ii) before selection of the remedial action if the President is diligently proceeding with a remedial investigation and feasibility study under section 9604(b) of this title or section 9620 of this title (relating to Federal facilities).

The court found that the Defendant had actual notice of intent to suit that satisfied the 60-day notice requirement of § 9613(g)(1). And, because § 9613(g)(1)'s pre-suit conditions are disjunctive, the Court declined to consider Defendant's remaining argument that natural resource damages claims are unripe until selection of the remedial action.

Relevant (2023) Deskbook Section: 10:13